IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

WP(C).No. 20543 of 2007(U)

AGAINST THE ORDER IN EP.104/2002 IN
OS.441/1999 of PRINCIPAL SUB COURT, PALAKKAD
.....

PETITIONER:

RAMAKRISHNAN, S/O VELAYUDHAN,
AGED 65 YEARS, MUTHUKKAD, CHITTOOR,
PALAKKAD DISTRICT.

BY ADV. SRI.SAJEEV KUMAR K.GOPAL
SRI.BINOY VASUDEVAN

RESPONDENTS:

MANIKKAN, S/O.APPUKUTTY,
MUTHUKKAD, CHITTOOR, PALAKKAD DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

= = = = = = = = = = = = = = =

W.P.C. NO. 20543 OF 2007

= = = = = = = = = = = = = = =

Dated this the 4th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to quash Ext.P4 order whereby the Subordinate Judge, Palakkad has issued arrest warrant to the respondent. The order reads as follows. "No payment. Issue arrest warrant to respondent". At the out set I may like to point out if this is the order it is an unsatisfactory order because the Court is expected to record at least two points before it orders issuance of arrest warrant, namely, that the judgment debtor has means to pay and that he is neglecting to pay the amount.

2. But, in this writ petition I find that the schedule of property is attached and two E.Ps. are filed for realisation of the same decree debt as E.P.104/02 and E.P.110/02. E.P.104/ is for arrest and E.P.110/02 is for realisation of the amount by sale of the property shown in the schedule. The total extent of the property shown in the schedule is 4 acres and 28 cents and it include cultivable land. That property is only under attachment and it has not been sold. So one can safely infer that there will be

sufficient income from this property. Though it is not a speaking order, I am not inclined to hold that the order requires interference but there is no point in sending a person to prison if the loan is realisable by other modes. Now, admittedly there is 4.2 acres of land belonging to the judgment debtor and E.P. is filed for sale of that property also. Though simultaneous execution is permissible there is nothing wrong in directing the party to proceed first with the sale and then resort to the other mode. Therefore, I direct the Court below to keep the order of arrest pending for a period of two months from today and meanwhile direct the judgment debtor to wipe off the liability. Since the property attached to the schedule in E.P.110/02 is there, the judgment debtor is free to move the Court below to release at least a portion of the property from attachment for sale so that he can wipe off the liability. This may be done after hearing both the parties.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

ul/-